UNITED STATES OF AMERICA
THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 18

Charged Party; and

NERONE & SONS, INC. Case No. 08-CD-135243
R.G. SMITH COMPANY, INC. Case No. 08-CD-143412

Charging Parties; and

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 310

Party-in-Interest

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 310

Charged Party; and

NERONE & SONS, INC. Case No. 08-CD-135244
R.G. SMITH COMPANY, INC. Case No. 08-CD-143415

Charging Party; and

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 18

Party-in-Interest

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 18'S REPLY TO THE REGIONAL DIRECTOR'S OPPOSITION TO REQUEST FOR SPECIAL PERMISSION TO APPEAL FROM THE REGIONAL DIRECTOR'S RULING

Now comes Charged Party, International Union of Operating Engineers, Local 18 ("union" or "Local 18"), by and through counsel, and respectfully submits its Reply to the Regional Director's Opposition to Local, 18's Special Permission to Appeal From the Regional Director's Ruling refusing to grant Local 18's Motion for Postponement of the 10(k) hearing in the present matter. A Brief in Support is attached hereto and incorporated herein by reference.

Respectfully Submitted,

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BRIEF IN SUPPORT

On Friday, February 6, 2015, at 2:50PM, Local 18 received the Regional Director's Opposition to Local 18's Request for Special Permission to Appeal from the Regional Director's Ruling ("Opposition Brief"). In that Opposition Brief, the Region sets forth its position as to why Local 18 should not be granted a postponement of a 10(k) hearing currently scheduled for Monday, February 9, 2015. Having reviewed the Region's Opposition Brief, Local 18 submits the following Reply.

First, contrary to the representation made by the Regional Director, it is an uncontested and incontrovertible fact that Local 18 received less than seven (7) business days' notice that the hearing in this matter would address "[w]hether an area-wide award is appropriate, and if so, (1) whether it should only cover similar work done by the Employer-parties to all instant cases or whether it should cover similar work being done by all employers and (2) the geographical scope of the area-wide award." Indeed, the Regional Director cannot dispute that it was not until January 29, 2015, that Local 18 was first served with the Region's Order Further Consolidating Cases and Notice of Hearing ("Notice of Hearing"). Nor can the Region contest that its Notice of Hearing was the first instance wherein Local 18 was informed that the February 9, 2015, hearing would address whether an area wide award should be issued that would cover all "similar work being done by all employers". Indeed, the Region's prior communications with Local 18 – specifically, its January 7, 2014, letter requesting evidence – did not refer or mention the issue of whether a new area wide award should issue that would "cover similar work being done by all employers[.]" Rather, the January 9th correspondence simply indicated that the Region was examining these charges in light of prior 10(k) area wide awards which themselves did not address or concern "similar work being done by all employers" but rather only addressed the employers that were parties to those cases. As such, there is no dispute that Local 18 was afforded less than two weeks' time to prepare for a 10(k) hearing addressing the business

practices of hundreds of employers who are not parties to this case and who have yet to be identified by the Region.

Second, as it pertains to Local 18's subpoena requests, while the Regional Director's Opposition Brief takes issue with the number of subpoena requests, it fails to acknowledge that these subpoena requests are the direct result of the Region's failure to timely advise Local 18 of the scope of the hearing or provide Local 18 with the identity of the employers at issue. Indeed, given the fact that Region's Notice of Hearing was the first definitive notice received by Local 18 that the 10(k) hearing would cover scores of unidentified employers; it is entirely justified - if not necessary - for Local 18 to request a large number of subpoenas in order to procure the testimony from as many employers as possible. Moreover, the fact that the Region complains that it was afforded minimal notice of these requests is not the fault of the Union. Rather, had the Region given more than seven (7) business days advance notice, Local 18 would have been able to provide more advance notice of its requests to the Region. Finally, had the Region allotted more than seven days' notice of the hearing, Local 18 would of also been afforded the opportunity to investigate the allegation contained in the Notice of Hearing and, potentially, pare down the number of subpoena requested. Indeed, the fact that the Regional Director was afforded a limited period of time to provide the necessary number of subpoenas is not the fault of Local 18. Rather, the fault lies with the Region's belated issuance of its Notice of Hearing and its failure to provide advance notice to Local 18 regarding the expanded and novel scope of the hearing. Moreover, Local 18 takes issue with the Regional Director's predetermination that the number of subpoenas requested by Local 18 is unnecessary and will result in redundant evidence. With all due respect, the Region has no right to make such a determination until the evidence is proffered.

Third, Local 18 wishes to point out that Regional Director has freely granted the other parties to the case – Charging Party employers and the LIUNA 310 – repeated postponements when so requested. Moreover, neither of those parties contested or objected to Local 18 present request for postponement. Accordingly, the Region's arguments concerning the necessity for a prompt resolution of this matter are undermined by the prior history of this case which is replete with delays. Indeed, when viewed in light of the prior postponements afforded to the other parties in this case and the lack of objection to Local 18 present request, the Region's assertions regarding "the urgency of these matters" appears to be somewhat disingenuous.

In sum, Local 18 does not seek an undue delay in the consolidated hearings that would prejudice the interests of the parties. Indeed, all parties are unopposed to a reasonable and understandable extension of time for the hearing to open in March of 2015. The Regional Director has afforded this basic courtesy to Nerone and LIUNA 310 when it rescheduled the Nerone Case for February 9, 2015, yet has failed to extend this same courtesy to Local 18. Given the attendant circumstances of the present case, there is no good reason for the Regional Director to deny the same to Local 18. Accordingly, Local 18 respectfully requests that the Board accept Local 18's Special Permission to Appeal and reverse the Regional Director's February 5 Denial of Local 18's Motion for Postponement.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing was electronically filed with National Labor Relations Board, Region 8, and served by email to the following on this 6th day of February 2015:

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